

2021 Child Support Guidelines Review Advisory Committee Report to Wisconsin Department of Children and Families

September 2021

In the fall of 2021, Bureau of Child Support Director Debra Barnes appointed and convened an advisory committee to provide guidance to the Department of Children and Families (DCF) on revisions to the state's child support guidelines for determining child support payments and the application of those guidelines under special circumstances. This report is the result of the extensive deliberations of the advisory committee, which was composed of representatives of the courts, the Wisconsin Bar, community-based organizations, county child support agencies, citizens, and the DCF.

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Summary

September, 2021

On October 20, 2020, the DCF announced the formation of an advisory panel to review the Percentage of Income Standard for child support orders in Wisconsin. The Child Support Guidelines Review Advisory Committee included representatives from the judiciary, public interest groups, child support agencies, and the DCF. The committee held four meetings between August and September of 2021. The meetings were held via Zoom.

Under Section 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), Wisconsin requested, and was granted, flexibility to extend the four-year period for completion of the guidelines review under 45 CFR 302.56€ by one year.

Guidelines Committee Purpose

The federal government requires that states review their child support guidelines every four years. This committee was charged with providing input and recommendations to the department as part of this required guidelines review. The committee reviewed and addressed the following:

- Reports from the University of Wisconsin Institute for Research on Poverty (IRP) and case law related to income imputation in setting child support orders.
- Materials on the appropriate application of the shared-placement formula and equivalent care.
- Current guidelines and anecdotal information related to the application of the Percentage of Income Standard in serial family cases.
- Recommendations to the department regarding which factors are most relevant when imputing wages to determine child support obligations.

Committee Process

The committee included individuals with considerable experience in child support policy development who represented the interests of custodial parents, non-custodial parents, and children.

The committee benefited from a presentation by Jacquelyn Boggess, Executive Director of the Center for Family Policy & Practice. Jacquelyn spent an afternoon with the committee exploring the impact of child support policy and practice on the economic security and well-being of low-income individuals and families. Staff from the Institute for Research on Poverty (IRP) at the University of Wisconsin were also present at all meetings to address questions related to child support research.



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The committee considered research reports and economic data on the following:

- The Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs; Proposed Rule, Office of Child Support Enforcement, published December 20, 2016.
- *Low-income and never married families: Service and support at the intersection of family court and child support agency systems*, Jacquelyn L. Boggess, April 2017.
- *The Use of Child Support Guidelines in Wisconsin: 2010 and 2013*, Leslie Hodges and Steven T. Cook, Institute for Research on Poverty, June 2019, Revised August 2019.
- *Child Support Payment, Income Imputation, and Default Orders*, Maria Cancian, Steven Cook, and Daniel R. Meyer, Institute for Research on Poverty, August 2019.
- *Alternative Approaches to Income Imputation in Setting Child Support Orders*, Leslie Hodges, Chris Taber, Jeffrey Smith, Institute for Research on Poverty, September 2019.
- *Cost of Raising Children and Expenditures on Children*, Cliff Robb, Institute for Research on Poverty, June 2019.
- *Too Much, Too Little, or Just Right? Recent Changes to State Child Support Guidelines for Low-Income Noncustodial Parents*, Leslie Hodges and Lisa Klein Vogel, Journal of Policy Practice and Research, November 10, 2020.
- *2016-2018 Child Support Policy Research Agreement Task 12: Potential Effects of a Self-Support Reserve in Wisconsin*, Maria Cancian, Molly Costanzo, Angela Guarin, Leslie Hodges, and Daniel R. Meyer, March 2019.
- *Expenditures on Children by Families, 2015*, Mark Lino, Kevin Kuczynski, Nestor Rodriguez, Tusa, Rebecca Schap, published January 2017, revised March 2017.
- *Review of the New Mexico Child Support Guidelines*, Jane Venohr, Ph.D. Center for Policy Research, September 9, 2018.
- *The State of Working Wisconsin, 2019, Facts & Figures*, Laura Dresser and Joel Rogers,
- *Getting Blood from Stones: Results and Policy Implications of an Empirical Investigation of Child Support Practice in St. Joseph County, Indiana paternity Actions*, Margaret F. Brinig, and Marsha Garrison, Family Court Review, Col. 56 Nov. 4, October 2018 521-543
- Case Law: *Rottscheit v. Dumler*, 2003 WI 62, 262 Wis. 2d 292, 664 N.W.2d 525, June 25, 2003 CSB 20-18R SSDI Payments and Calculating Child Support
- CSB (Child Support Bulletin) issued by the Bureau of Child Support

CSL (Child Support Letter) issued by the Bureau of Child Support

- CSB 20-10 Flexibility, Efficiency, and Modernization in Child Support Enforcement Finale Rule – Technical Amendments
- CSB 18-08 Birth Cost Guidelines
- CSB 18-07 Support Calculations in Cases Receiving Adoption Assistance
- CSB 18-04 Changes to DCF 150
- CSB 17-14 Incarcerated Non-Custodial Parents
- CSL 14-08 Setting and Reviewing Medical Support Orders



Income Imputation/Evidence of Income

Recommendation:

Modify the guidelines to include additional factors from the 2016 Federal Final Rule and create two separate imputation pathways: one for when information about the party is known, and one for when information is unknown.

DCF 150.03(3) Revised Option

“(3) Determining income imputed based on earning capacity. In situations where the income of a parent is less than the parent's earning capacity or is unknown, and in the absence of credible evidence to the contrary, the court may impute income to the parent at an amount that the court determines represents the parent's ability to earn. The court may consider the following factors when imputing income based on earning capacity:

- a. The parent's age;
- b. The parent's education;
- c. The parent's training and recent work experience;
- d. The parent's job skills;
- e. Earnings during previous periods of employment;
- f. The parent's history of incarceration and criminal history;
- g. Employment barriers (e.g., homelessness, license, alcohol or other drug dependence);
- h. Record of seeking work;
- i. The parent's assets;
- j. The parent's residence and cost of housing;
- k. Vocational evaluation, if available;
- l. If the parent is unemployed or under employed, whether the unemployment is due to the parent's own voluntary conduct or misconduct on the job.
- m. A parent is engaged in reasonable career or occupational training to establish basic skills or that is reasonably calculated to enhance earning capacity.
- n. Unusual emotional or physical needs of a natural or adopted child common to the parties if that child requires that parent's presence in the home; or
- o. A parent is a caretaker of a child common to the parties and the cost of childcare is prohibitive.
- p. The parent's receipt of TANF cash assistance;
- q. The parent's receipt of SSI;
- r. Any other factor the court deems relevant.

If a parent has gross income or income modified for business expenses below his or her earning capacity, the income imputed based on earning capacity shall be the difference between the parent's earning capacity and the parent's gross income or income modified for business expenses.



(4) Determining income imputed when no information is known.

In situations where the income of a parent is unknown and evidence is presented that due diligence has been exercised to ascertain information on the parent's actual income or ability to earn and that information is unavailable, the court may impute to the parent the income that a person would earn by working 10 to 35 hours per week, based on the availability of work in or near the parent's community for individuals in similar circumstances of the parent, for the higher of the federal minimum hourly wage under [29 USC 206](#) (a) (1) or the state minimum wage in s. [DWD 272.03](#).

Justification

- A. Federal regulation requires the setting of initial orders, and, in the review and adjustment of orders, that a "factual basis" for the setting of support is established.
- B. The 2016 Federal Final Rule required states to change their guidelines to provide that a child support order must be based on a payor's ability to pay. If income imputation is authorized under a state's guidelines, a state must take the relevant factors into consideration.

Discussion Points/Considerations

- A. The 2015 Wisconsin Guidelines Committee proposed the addition of a range of 10 to 35 hours per week when applying income imputation.
- B. There was considerable discussion about employment barriers, e.g. homelessness, alcohol, or other drug dependency, etc.
- C. Concerns were raised about how this area of the guidelines will impact the undocumented population.
- D. There was discussion regarding who has the burden to support or refute a factor when imputing income and whether there would be any empirical evidence available for each factor.

The Guidelines Committee supported the recommendations listed above. Objections were expressed regarding inclusion of the following factors:

- a parent is the caretaker of a young child common to the parties and the cost of childcare is prohibitive,
- availability of work in or near the parent's community,
- prevailing wages in the parent's community,
- employers willing to hire the NCP,
- a parent is engaged in reasonable career or occupational training to establish basic skills or that is reasonably calculated to enhance earning capacity, and
- cost of housing.

The objections were based upon a belief that the factors may be misused to shirk responsibilities and the burden of proof would be a challenge. The factors were retained based upon the Federal Final Rule requirements.



Equivalent Care

Recommendation:

Modify the Child Support Guidelines for shared placement and equivalent care situations as follows:

- Retain the current language in DCF 150.035(1) for the application of equivalent care.
- Add a note to the end of DCF 150.02(10) that says equivalent care is not granted when overnight credit has already been awarded.
- *Note: Equivalent care time is not to be granted to a parent who received credit for an overnight within 24 hours.*
- Add an example of appropriate application of equivalent care to the rule:

Example of equivalent care:

Number of children: Two

Parent A: \$3,000 monthly income available for child support

Parent B: \$4,000 monthly income available for child support

Parent A: has court – ordered placement 12 overnights every two weeks.

Parent B: has court - ordered placement 2 overnights every two weeks.

Parent B: also has placement 3 days a week from 8 am – 3 pm

7-hour blocks 6 times every two weeks = 6 half days in a 2-week period or 3 overnights.

Parent A has court – courted placement of the children 312 overnights a year or 70%

Parent B: has court- ordered placement of the children 130 days a year or 30% after awarding equivalent care time to Parent B.

Total number of overnights = 442 (312 + 52 + 78)

Parent A = 70%

Parent B = 30%

Time with Parent A = 70% (312/442 = .70)

Time with Parent B = 30% (130/442 = .30)

Parent A Parent B

1. Monthly income available for child support

\$3000 \$4000

2. Monthly income available for child support X percentage standard for two children

\$3000 X 25% = \$750 \$ 4,000 X 25% = \$1,000

3. Amount in 2. x 150%

\$750 X 150% = \$ 1,125 \$1,000 X 150% = \$1,500

4. Amount in 3. X the proportion of time that child(ren) spend with the other parent

\$1,125 X 30 % = \$337.50 \$1,500 X 70% = \$1,050

5. Offset \$1,050–337.50 = \$712.50



Justification

- A. Equivalent Care is being applied in situations in which it was not intended to be applied.
- B. Equivalent Care was initially added to the Rule to provide credit to a payer for the cost of caring for the child(ren) that do not involve overnight care.
- C. The misinterpretation of the equivalent care rule allowed the shared placement formula and equivalent care to be applied for the same person during the same period of time.

Discussion Points/Considerations

- A. It is believed that the current equivalent care language is confusing and is not being applied in situations where it could be applicable.
- B. The addition of a new example to the rule will demonstrate the appropriate application of the equivalent care rule.

The Guidelines Committee supported the recommendations listed above.



Serial Family Payor

Recommendation:

Modify and add language to DCF 150.04(1)(b)(3)(a) to clarify the serial family formula.

"If the parent is subject to an existing support order for that legal obligation, except a shared-placement order under s. DCF 150.035 (1), the support for that obligation is the ~~monthly amount of that order.~~ higher of the existing order or the amount that would be set today based on the guidelines."

Justification

- A. New language would allow the courts to determine the income available for support for serial payors by subtracting the amount of existing orders or by subtracting the amount that the previous orders would be if they were set in the present.
- B. Limiting the options will provide a more consistent approach to the use of the formula across Wisconsin child support agencies.

Discussion Points/Considerations

- A. Serial family situations often require multiple court actions to modify and right size obligations.
- B. Lack of consistency in how low income/serial family calculations are determined is a concern, as orders are often in different counties or different states.
- C. The committee attempted to balance fairness for all children involved with reasonableness of orders for the payer.

The Guidelines Committee supported the recommendations listed above.



Health Insurance

Recommendation:

- The committee recommends no change to the medical support/health insurance language within the guidelines.
- The Wisconsin Department of Children and Families will focus on employer training for the determination of reasonable cost and the use of the National Medical Support Notice.
- The committee recommends addressing the definition of reasonable cost through DCF policy.

Discussion Points/Considerations

- A. Wisconsin courts do not often see this issue. Clarity can be easily provided by enhancing department policy and communication to Wisconsin child support agencies and employers.

The Guidelines Committee supported the recommendations listed above.



Federal Final Rule Provisions

Recommendation:

Modify the Child Support Guidelines to address requirements outlined in the Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs.

- Modify the guidelines to include language that states that incarceration is not to be treated as voluntary unemployment for the purposes of establishing or modifying child support orders.
- Repeal language in DCF 150.05(1)(a), which specifically defines private health insurance to exclude BadgerCare and public insurances.

Discussion Points/Considerations

- The 2016 Federal Final Rule establishes that public assistance funded health insurance is an appropriate substitute for private health insurance if neither parent has private health insurance available at a reasonable cost. The DCF proposes that families should not be required to provide private health insurance if the child has BadgerCare, and private insurance is not available to either parent at a reasonable cost, including all out of pocket costs for the policy.
- The Federal Final Rule required states not to consider incarceration as voluntary unemployment when establishing or modifying an order.



Appendix 1: Child Support Guidelines Review Committee Membership

A very special thank you to the Guidelines Advisory Committee and their respective organizations.

Michele Mackey
Kids Forward

Karyn Gimbel Youso
Family Law Section

Lia Ocasio
End Abuse Wisconsin

Robert Held
Legal Action of Wisconsin

Adrienne Gilbert Ramirez
Wisconsin Women’s Network

Benjamin Kain
Involved Fathers of Wisconsin

Steve Blake
Dads of Wisconsin

Leatha Stanley
Urban league of Greater Madison

Tony Bickel
Fathers for Children and Families

Kathleen Murphy
Milwaukee County Child Support Agency
Attorney

Christine Lidbury
Wisconsin Women’s Council Executive
Director

Marylee Richmond –
Walworth County Child Support Agency

Honorable Thomas Walsh
Brown County Circuit Court

Commissioner Mark Fremgen
Dane County Family Court



Wisconsin Department of
Children and Families